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EXAMINER

PLUCINSKI, JAMISUE A

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/939,206
Filing Date: August 24, 2001
Appellant(s): GILL ET AL.

Karl H. Koster
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed March 14, 2007 appealing from the Office action mailed November 16, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

The Claim rejections are as follows:

Claims 46, 47, 49-61, 63-73 and 75-83 are rejected as being obvious under 35 USC 103(a) over Kulik (5,661,653) in view of Danford-Klein (6,601,667).

Claims 48, 62 and 74 are rejected as being obvious under 35 USC 103(a) over Kulik, Danford-Klein and further in view of Mattioli (6,286,009).

The correction to the claim numbers, reflect what claims are actually being rejected in the discussion of the rejection, as well as being argued by the applicant in the Appeal Brief.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,661,653	KULIK	8-1997
6,061,667	DANDFORD-KLEIN ET AL.	5-2000
6,286,009	MATTIOLI, JR. ET AL.	9-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Appellant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(c), (f) or (g) prior art under 35 U.S.C. 103(a).

3. Claims 46, 47, 49-61, 63-73 and 75-83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kulik (5,661,653) in view of Danford-Klein et al. (6,061,667).

4. With respect to Claims 46, 51, 60, 66, 72 and 77: Kulik discloses the use of a rate sheet input module (25) for accepting rate sheet information (see Figure 2), a custom rates processor (31) which functions as a rate sheet analyzer module and together with a rates manager functions and also a rule generator (25 and 31, with corresponding detailed descriptions in Columns 5 and 6) and that interfaces with a template storage module (33).

5. Kulik, however, fails to disclose the system being used for multiple carriers, and where each template is specific for the carrier and each table is specific to each carrier. Danford-Klein discloses the use of a rating module (carrier specific service engines, which the examiner considers to be a form of carrier specific templates), which calculates rates for multiple carriers, using carrier rules, and analyzing rate tables (See abstract, Figures 6A and 8, Column 2, lines 23-44, and Column 3, lines 31-42).

6. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Kulik to be capable of being used for multiple carriers, and where the rate sheet is specific to the carrier, in order to increase performance of calculating rates for multiple carriers, and to provide choices to customer for shipping a parcel and determining the least expensive carrier for the parcel. (See Danford-Klein, Columns 2, 3 and 6)

7. With respect to Claims 47, 61, and 73: Kulik discloses some examples of the rate tables, which the examiner considers to be spreadsheet format (see columns 7 and 8).

8. With respect to Claims 49, 63, and 75: Kulik discloses the user interfacing with the system to define custom rate information (Column 6, lines 21-29).
9. With respect to Claims 50, 52, 65, 67, 76, and 78: Kulik discloses the user can define such things as class, and weight, in a template for determining the rate (column 6, lines 20-40, Tables 1-3). The examiner considers this to be a keyword, that signifies the type of data (i.e. class or weight).
10. With respect to Claims 54, 69, 80 and 81: See reference numerals 21 and 23.
11. With respect to Claims 55-58: See Danford-Klein Table 1, Columns 17-19
12. With respect to Claims 59, 71, 82 and 83: See Danford-Klein, Table 1, Columns 17-19.
13. With respect to Claim 70: Kulik discloses the use of multiple templates, See Figure 2.
14. With respect to Claims 53, 68 and 79: Kulik discloses the claimed invention except for the template storage module being remote from the rate sheet analyzer module. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have to template storage module be remote from the rate sheet analyzer module, since it has been held that the location of parts, whether it be local or remote, involves only routine skill in the art.
15. Claims 48, 62, and 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kulik and Danford-Klein in view of Mattioli, Jr. et al. (6,286,009).
16. With respect to Claims 48, 62 and 74: Kulik, as disclosed above for Claim 46, discloses the use of customized rate tables by class, but fails to disclose the rate tables including zones. It is old and well known in the art that rate calculations for shipping, include such parameters as

zone (for example international shipping is always higher than shipping within the United States. Mattioli shows that the zone is commonly included in a rate calculation (column 3, lines 32-52). It would have been obvious to one having ordinary skill in the art at the time the invention was made, to have the rate calculation and rate tables of Kulik, include the zone, as disclosed by Mattioli, as specified in claim 48.

(10) Response to Argument

With respect to Appellant's argument that Danford-Klein does not disclose a "rate sheet analyzer module" capable of processing different carrier's rate sheets: The appellant is arguing that a single "rate sheet analyzer module" is not the same as a plurality of "carrier specific service engines" and must be capable of "selecting the one of the plurality of templates". It should be noted that in the rejection, the examiner equated the carrier-specific rating engines of Danford-Klein with the templates, not with the rate sheet analyzer module. The examiner used the word rating module but in parenthesis explained how the reference of Danford-Klein equated to the claim limitations "carrier specific service engines, which the examiner considers to be a form of carrier specific templates". Therefore the appellant is arguing the reference differently than it was applied in the rejection. In the rejection the limitation of the rate sheet analyzer module was taught by Kulik, not by Danford-Klein. Danford-Klein was used to show the use of multiple carriers being evaluated, not that multiple carriers are evaluated using one rating engine. All of the arguments are based off of Danford-Klein not reaching a rate sheet analyzer module being used for multiple carriers, due to the fact that is not how the reference was being applied, the arguments are not considered to be persuasive. It should also be noted that the appellant's

claimed invention is drawn to a system which only rates one carrier at a time, but stores information for multiple carriers, which is what the combination of Kulik and Danford-Klein cover. Furthermore, the final results of the combined references are functionally the same as the instant invention, getting customized rates in a system for multiple carriers.

With respect to Appellant's argument that the Kulik reference does not disclose "templates" as interpreted according to the present specification: The appellant has stated that the Kulik reference does not require a template to interpret the standard rate tables, but rather uses the template to define how to create a new customized rate table. The appellant further goes on to state that Kulik is "not used to read or interpret the standard rate table". The claim limitations state "templates.... structured according to said one of the plurality of formats to interpret the rate sheet" and "a rule generation module determining a freight charge associated with the freight carrier using the selected one of the plurality of templates and the rate sheet". The template of Kulik is used to interpret the rate sheet to form a customized rate table, which is used to determine a freight charge. Therefore the freight charge is determined using the template as well as the rate sheet. It is the examiner's opinion that in order to form a customized rate sheet, then the standard rate sheet will be interpreted first, which in Kulik is done by the template. The examiner submits that the claimed limitations are taught by the combination of Kulik and Danford-Klein.

With respect to Appellant's argument of Claim 49: the appellant has stated that Kulik does not disclose multiple carriers therefore it would be inconsistent for a user to provide information

indicating a specific carrier. However the rejection of claim 49 is based on a 103 rejection of Kulik and Danford-Klein. Kulik discloses customized templates and customized rate sheets. Danford-Klein discloses templates are specific to multiple carriers, therefore if the user interface was capable of a user indicating which template to be used, then it is fully capable of selecting what user. The claims are directed to a system, which are held to structural limitations and the capabilities thereof. The combination of the two references would together read on the claimed limitation.

With respect to Appellant's argument of Claims 63 and 75: the claim limitations recite the information is "associated" with a rate sheet. Furthermore the user uses the templates to customize rate sheets, therefore the information is about the rate sheet.

With respect to Appellant's argument of Claims 50, 52, 65, 67, 76 and 78: the appellant is arguing that Kulik does not disclose selecting and retrieving the template based on the keyword. If the rate sheets and the templates are customizable, and as disclosed above, the combination of Kulik and Danford-Klein, are customized and interpreted based on the keyword. Again, the final results are functionally the same as the present invention.

With respect to Appellant's argument of Claims 54 and 80: the appellant is arguing that Kulik discloses a single system in Figure 1, and not a distributed system. The appellant is arguing limitations which are not claimed. The claims do not disclose a distributed system but merely claim a remote location, however never state remote from what.

With respect to Appellant's argument of Claim 69: Kulik discloses the use of customized rate templates, therefore if they are customized then they would have an identifier. The appellant has defined the identifier more, just merely states that there is one. The examiner considers there to be an identifier.

With respect to Appellant's argument of Claim 81: The appellant has stated that the appellant software module 21, nor motion control system module 23 do not perform these functions as recite, yet have not outlined how they do not perform the functions, merely states that they don't. The examiner considers them to perform these functions, of receiving and storing.

With respect to Appellant's argument of Claims 55-58: The table of Columns 7-19 is a table of fees and information that is stored in a file, which the examiner considers to be logging. Column 18 states there is a customs fee, which the examiner considers to be a tariff, the table also discloses fees for commodity check and for surveillance and for palleting and handling charges, If the fee is charged then the system has a module that charges for it., therefore considered to be obvious over Kulik in view of Danford-Klein.

With respect to Appellant's argument of Claim 70: Kulik discloses the use of customized templates, if they are customized to the user, and there can be more than one user, then there is more than one template.

With respect to Appellant's argument of Claims 48, 62 and 74: The appellant has argued that the prima facie case of obviousness has not been met, since the statement of modification does not say "well within the ordinary skill of the art". The examiner has stated that one of ordinary skill in the art would have been motivated to combine the reference and has supplied the motivation. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

The examiner has met all 4 requirements, therefore has established the prima facie case of obviousness.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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